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June 28, 2023

VIA ECF


Honorable Jennifer L. Rochon
United States District Court
Southern District of New York
500 Pearl Street, Room 1920
New York, NY 10007

The request is GRANTED. All parties consent to this request. In light of the privacy interests at stake in the narrow, personal information identified by Armistice Defendants in their proposed redactions, which are filed under seal (ECF Nos. 116, 123), the Court concludes that the presumption of public access is outweighed by the need to protect confidential, personal information. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120, 124 (2d Cir. 2006). Accordingly, the narrow, identified information shall remain under seal, and in redacted-form on the public docket.

Dated: July 11, 2023
New York, New York

SO ORDERED.

Re: *Roth v. Armistice Capital, LLC et al.*, Case No. 1:20-cv-08872 (JLR)


JENNIFER L. ROCHON
United States District Judge

Dear Judge Rochon:

We represent defendants Armistice Capital, Armistice Capital Master Fund Ltd., and Steven J. Boyd (together, the “Armistice Defendants”) in the above-captioned action. We write pursuant to Rule 4(B) of Your Honor’s Individual Practices in Civil Cases to respectfully request redaction of certain information that Plaintiff Andrew E. Roth (“Plaintiff”) intends to file in support of his opposition to the Armistice Defendants’ Motion for Summary Judgment. Nominal defendant Vaxart, Inc. (“Vaxart”) joins in this request. In accordance with Your Honor’s rules, we conferred with Plaintiff’s counsel on June 28, 2023. Plaintiff’s counsel has no objections to the proposed redactions. We are submitting herewith copies of the six documents with redactions and will contemporaneously file under seal unredacted, highlighted copies of those same documents.

Despite the presumption of public access to judicial documents, courts permit the sealing and redaction of documents when faced with countervailing factors that warrant confidentiality. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *see also Nixon v. Warner Commc’ns Inc.*, 435 U.S. 589, 598 (1978). Courts take certain privacy interests, including the need to protect confidential personal information, into account when granting requests to seal and redact information. *Lugosch*, 435 F.3d at 124; *see also Rojas v. Triborough Bridge & Tunnel Auth.*, No. 18-CV-1433 (PKC), 2022 WL 773309, at *3 (S.D.N.Y. Mar. 14, 2022) (considering the “privacy interests” of individuals in granting motion to redact confidential personal information). As a result, courts routinely permit parties to redact personally identifiable information such as personal telephone numbers. *See, e.g., Rojas*, 2022 WL 773309, at *3 (permitting redaction of witness’s telephone number because it “does not assist the public in monitoring or understanding the judicial process”); *United States v. Vinas*, No. 08-CR-823 (NGG), 2017 WL 1969665, at *2



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(E.D.N.Y. May 11, 2017) (redaction of personal phone number to protect privacy interest was consistent with rules permitting redaction of “personal identifying information”).

Here, the relevant exhibits include particular individuals’ personal mobile telephone numbers. Certain of those individuals are not parties to the case and none of the personal telephone numbers are relevant to any claim or defense in this case, nor helpful to the public in monitoring or understanding the judicial process. *See Rojas*, 2022 WL 773309, at *3. This is the type of personal identifying information that courts permit to be redacted, and the proposed redactions are narrowly tailored to protect the privacy interests of these individuals without burdening the public’s right of access. *See id.*

For these reasons, the Armistice Defendants and Vaxart respectfully request that the foregoing documents be filed under seal and with redactions.

Respectfully,

/s/ Kaitlin D. Shapiro
Kaitlin D. Shapiro

cc: All Counsel (*via ECF*)